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Hijacked Direct Democracy: The Instrumental Use of Referendums in Romania

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Abstract

The relationship between political parties and referendums received increased attention in the literature. While most research focused on the challenges faced by political parties, little attention is dedicated to the ways in which they can use referendums to serve their purposes. This article analyzes the seven national level referendums organized in post-communist Romania between 1991 and 2012 and shows how referendums were not used primarily as means to reflect citizens' opinions on policy issues. Instead, they were primarily used as electoral strategies for legitimacy purposes or to augment the popularity of the initiators or main supporters. In isolated instances, they were oriented against other competitors.

Keywords: referendums, political parties, electoral strategy, institutional conflict, Romania

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Introduction

The general goal of direct democracy is to increase the quality of both input and output functions of a political system (Easton 1965). The tools of direct democracy adapt to changing demands of the citizenry towards the political system and may help to cure the democratic malaise (LeDuc 2003; Newton 2012). The latter resulted from disaffection with representative democracy and gradual abandon of the traditional modes of political involvement, e.g. electoral turnout in decline, shrinking party membership (Dalton & Wattenberg 2000; Norris 2011). To bring the citizens back in, direct democracy allows people to express their preference on a public issue, thus providing an important voice in the decision-making process. Along these lines Newton (2012, p.9) defines direct democracy as "that form of democracy in which citizen power and authority is exercised without the mediating influence of the elected representatives and officials of representative government".

An extensive body of research illustrated how the use of referendums has both a direct and indirect impact on the functioning of contemporary societies, with important

implications for political support, accountability, effectiveness of decisions and political legitimacy (Franklin et al. 1995; Mendelsohn & Parkin 2001; Papadopoulos 2001; Lupia & Matsusaka 2004; Hobolt 2006; 2016; Altman 2011; 2013; Gherghina 2017). If this is the case, what happens when referendums – as the most common form of direct democracy – are used by political actors to serve their purposes? In providing an answer, this article focuses on national level referendums in Romania. The country legislation does not allow for bottom-up practices, i.e. citizens cannot call for referendums, in approximately two decades the country organized seven referendums (the first in December 1991 and the most recent in July 2012). Four of these were required by legislation (mandatory) and three initiated by the country president. This article illustrates how the institution of the referendum procedure was used in a highly instrumental way by various political actors. As such, the referendums were not seen as means to reflect citizens' opinions on policy issues but rather to mobilize supporters and persuade voters. The qualitative analysis reveals how referendums were not used primarily as means to reflect citizens' opinions on policy issues. Instead, they were primarily used as electoral strategies for legitimacy purposes or to augment the popularity of the initiators or main supporters. In isolated instances, they were oriented against other competitors.

The article begins with a conceptual and theoretical discussion about referendums and political parties. The second section briefly describes the legislative framework for referendums, questions in the referendums and party system in Romania. Each of the following three sections is dedicated to the context and use of the constitutional referendums (1991 and 2003), the impeachment procedures (2007 and 2012) and the referendums initiated by the country president. The final two sections include a comparative discussion and concluding remarks.

Referendums and Political Parties

A referendum is defined as the process through which citizens vote on one public issue (Butler & Ranney 1994).¹ The emphasis is on the issue itself since this implies a choice made by citizens between two alternatives. This choice is the answer to one question on the ballot.

¹ No distinction between referendums and plebiscites is made. A plebiscite is either an ad-hoc referendum or it deals with issues other than laws or bills considered by the legislature, being mainly used for approval of policies initiated by government (Suksi 1993, p.10). Since in practice the borderline between legislative decisions and other policy decisions is often blurred the generic concept of referendums is used.

Following this reasoning, a referendum is the answer to such a question. If more than one question is asked in a single day, they should be considered as separate referendums. Apart from this conceptual reason, three additional arguments can be brought to substantiate such a measurement. First, citizens can choose which of the questions they want to answer. There were instances in which the turnout for referendums organized the same day differed for the addressed questions. Second, the initiator of the questions asked the same day can be different. Third, the questions asked during the same day are often very different.

The classification of referendums received increased attention in the literature. In the context of this article two categories are useful: the initiator and the outcome of a referendum. Suksi (1993) has provided a compelling differentiation between mandatory and non-mandatory referendums. The mandatory type is used for specific issues of great importance to a political system that can be modified only through referendum. Mandatory referendums are also called law controlling (Gallagher & Uleri 1996). Within the non-mandatory category, Suksi identifies two types: active (introduced by citizens) and passive (introduced by state authorities).

This article makes an effort at mapping the interplay between referendums and political parties. In a broader sense, several scholars have considered referendums intensely connected with party politics and electoral outcomes (Vowles 1993; Midtbo & Hines 1998; Walker 2003). A visible impact of referendums on the political scene is the way in which it shapes the party system. Referendum campaigns are topic oriented and thus do not align along ideological differences. Political parties at the fringes of the political spectrum may join forces and determine the mainstream parties – otherwise fierce competitors against each other – to coalesce against them (de Vreese & Semetko 2004). The topic of a referendum may dominate the election and be the main driver behind a government coalition as it happened in the Czech Republic with the EU accession referendum (Baun et al. 2006). However, referendums may also weaken the organization of political parties and negatively affect their public image. The recent example of Brexit illustrated how referendums could increase the intra-party cohesion. There are factions belonging to the two different camps and parties appear divided in the eyes of the public. This situation may either lead to mixed cues sent to their electorate (Scarrow 1999) or to the absence of a firm recommendation on how to vote. This political ambiguity increases uncertainty both among voters (regarding the capacity of the parties to provide reliable information for decision-making) and within the

ranks of the parties. One further challenge faced by political parties in referendums is the absence of issue ownership (de Vreese 2006). Unlike in an election campaign in which political parties bring to the political agenda their own issues and have the possibility to claim ownership, the referendums provide a decision between two alternative policies on which several parties align.

Much emphasis has been placed on the consequences of referendums for political parties. Some studies also refer to what political parties may obtain from the use of referendums. Such a behavior does not come as a surprise since a referendum is “a tool rather than an end in itself, it can be used by various political actors to pursue their political goals” (LeDuc 2009, p.49). Rahat (2009, p.99) speaks about three reasons to initiate a referendum: avoidance of the need to make a tough decision by putting some problematic issues aside and decoupling them from election campaigns, a way to legitimize the decision or empower the initiator of a referendum, and a possibility to block a majority decision. These reasons do not exclude each other and they can be combined. One example is the 2016 referendum in Hungary about the migrant quotas. The Fidesz-led government called for a referendum in the attempt to avoid making a tough decision on its own, seeking to legitimize it through the voice of the people. At the same time, there are instances in which political parties couple the referendum topic with election campaigns and use the referendum for public legitimacy, e.g. the Czech EU accession (Baun et al. 2006). In Germany, political parties introduced direct democracy at state and local level to regain the sympathy of voters and to determine them to vote (Scarrow 1999).

Following this line of argumentation, the empirical sections of this article provide evidence regarding the extent to which political parties in Romania used the referendum as the appropriate way to resolve an issue in their favor. The referendums were not about the submission of a public policy to a direct popular vote but rather about the distribution of power between state institutions and the legitimacy of these institutions. The most important implication of this strategic use of referendums is that the actor left out is the people (Walker 2003), the essence of the entire concept of direct democracy. The next section introduces the legal framework, referendums used and the main political parties in post-communist Romania.

Legislation, Referendums and the Romanian Parties

To understand the legal provisions and the use of referendums in Romania it is important to note that the country has a semi-presidential system in which the country president and the prime minister share the executive power. Equally important, both the president and the legislature are elected through a direct vote and thus have comparable levels of legitimacy (i.e. derived directly from citizens). Until 2004, the two types of elections were held simultaneously but the 2003 constitution extended the presidential term in office to five years so the overlap is quite rare (e.g. legislative election in 2008, presidential elections were organized in 2009). This semi-presidential system places the president in a relatively ambiguous position between the two figures of the executive, with potential institutional deadlocks in cases of cohabitation (Verheijen 1999; Gherghina & Miscoiu 2013). Cohabitation refers to the situation when the president belongs to another political camp than that of the prime minister and of the parliamentary majority.

The Romanian legislation covers two types of referendums at national level: mandatory and top-down initiated. The first piece of legislation regulating the national referendums is the Decree-Law no. 29 / 1990 which institutes it as a possibility to consult citizens about the important problems. the way in which the referendum should be organized was not explained and was supposed to be the topic of another law. Such a law was adopted shortly before the referendum for the adoption of a new constitution (in November 1991). Law 67 / 1991 provided details about the organization of the referendum and required no participation quorum for results validation. The law was specially designed for the constitutional referendum to be organized on 8 December 1991, the first two articles making explicit reference to that vote.

The 1991 constitution (and its 2003 revised version) indicate the two types of referendums: mandatory with binding effect only in issues related to constitutional matters and impeachment procedures, and top-down initiated (by parliament and president) with consultative character. Art. 90 of the constitution reads as follows: "The President of Romania may, after consultation with Parliament, ask the people of Romania to express, by referendum, their will on matters of national interest". Law No. 3 / 2000 replaces the previous laws on referendums and introduces the participation quorum of 50% + 1 of all voters as a requirement for validation of results. It also settles the matters that are considered to be of national interest: economic reform and strategy, public and private property, public administration issues, education matters, defense, international treaties

and European accession. This law was amended several times especially around the organization of referendums. In 2009, when the Romanian president called for two referendums the law was amended through a Government Emergency Decree (No. 103 / 2009) and introduced the provision to organize the referendum in the same voting poll stations with the presidential or legislative elections, when they take place simultaneously. In 2012, when the impeachment referendum was called against the country president, another emergency decree (No. 41/2012) removed the participation quorum as a threshold for validation. This was overruled by the Constitutional Court and the participation quorum remains in place. Law No. 341 / 2013 reduced the participation quorum to 30% of the total number of voters, i.e. those registered in the permanent electoral lists. Romania has an automatic registration system in which all citizens with a minimum age of 18 years are included. One of the major problems of these lists is their slow update. The law introduces an additional paragraph in which the referendum is valid when at least 25% of the total number of voters registered on the permanent electoral lists cast a valid vote.

Table 1 summarizes the features of the referendums organized in Romania. These will be discussed in detail in the following three sections, including the context around each vote. The general observation to be discussed here, in line with the legal provisions, is the existence of two invalid referendums although three of them did not meet the participation quorum required for validation. The 2007 referendum for presidential impeachment had a turnout of 44.5% and was validated by the Constitutional Court without any mention regarding the quorum. In its decision (No. 5 / 2007), the Court explains that the majority of valid votes was against the impeachment procedure and thus the president can return to office. Quite likely, the result was validated due to its negative outcome: since most of the citizens who turned out to vote were against the proposal it made little difference in terms of the final outcome if the referendum was valid. However, five years later the Constitutional Court invalidated (with a six to three decision) the 2012 impeachment referendum, regulated by the same legislation as the 2007 referendum. In that case, the decision of the Court came after rejecting a Government Emergency Decree and after clearly emphasizing before the referendum that the quorum must be met to be valid (see the following sections).

Table 1 about here

A brief description of the main political parties is relevant to understand the context in which referendums were initiated. The Social Democratic Party (PSD) dominates the Romanian political scene and won the popular vote in six out of the seven legislative elections in which it participated. Formed in 1992 as a splinter of the National Salvation Front (FSN), the PSD is a successor party of the pre-1989 Communists. Initially called the Democratic National Salvation Front (FDSN) and then Party of Social Democracy in Romania (PDSR), it joined forces in 2001 with the Romanian Social Democratic Party (PSDR) and changed its name in the current PSD. It led four coalition governments and was included as partner in another one. Its leader was the country president between 1992-1996 and 2000-2004. Their average political support is around 35%, very stable since 2000; an exception are the most recent legislative elections (December 2016) in which the party received more than 45% of the votes for both Chambers of the Parliament.

The direct successor of the FSN is the Democratic Party (PD) that changed its name into Liberal Democratic Party (PDL) after a merger with a splinter from the Liberals in 2007. A relatively small party until 2000, the party was resuscitated by its new leader Traian Băsescu who will also become the country president for two terms between 2004 and 2014. It led the government coalition in the 2008-2012 term in office and was included twice in government coalitions. The party ceases to exist in 2014 when it is absorbed by the National Liberal Party (PNL). The latter is a revived party with rich history before communism. Established in the 19th century, the liberals often governed the country and were banned during communism. In post-communism the party was marked by a large number of splits and mergers that did not raise obstacles to notable electoral performance. They were the leading government party during the 2004-2008 term in office, joined two other coalition governments (in 1996-2000 with the PD, in 2012-2016 with the PSD) and their leader became country president in 2014.

These three political parties played a major role in shaping and using referendums. The party system includes other small size or episodic political parties, involved to a limited extent in the use of referendums. Their names and positions will be explored when describing the referendums in the following three sections. The description of referendums is structured according to topic and not chronological: those addressing the constitutional adoption and revision, presidential impeachments, and resident-initiated referendums.

The Constitutional Referendums: 1991 and 2003

The violent events in December 1989 brought to an end the authoritarian regime of Ceausescu. The regime change marked the beginning of a transition period in which the existence of the previous communist setting was no longer accepted and new institutions had to be created. The main tasks of these institutions were to provide a framework in which the state could develop, to ensure the functioning of the political system (Berglund & Dellenbrant 1994; Elster et al. 1998) and to set the country on the path to democratization (Verdery 1996; Holmes 1997). While these issues formed the bases of constitution-making, several background elements are relevant for a better understanding of the process.

In many countries from Central and Eastern Europe, the phase of institution (re)building at the end of the 1980s or beginning of the 1990s was preceded by negotiations between communists and opposition forces. This transfer of power took place in the so-called Round Table Talks that were negotiations aiming to establish the bases for a new and reformed political system. Romania had only two meetings organized in five days (27 January – 1 February 1990) and no official representatives of the former regime were present. Since communism was overthrown more than one month before, these negotiations were the official replacement of the previous regime but without a division of power within the “new” political elite (Walsh 1994, p.385).

The structure of this political elite is crucial in understanding the developments leading to the first post-communist referendum in Romania. In December 1989, after the end of the communist regime, the country was governed by the FSN. This political organization, led by Ion Iliescu (later the leader of the PSD), was the provisional governing body of Romania until the first post-communist elections. Initially, the organization announced that it is not a political party and would not nominate candidates in elections. However, the FSN elites who originated in the secondary echelons of the Romanian Communist Party changed their mind and in February 1990 – a few days after the round Table Talks – transformed the organization into a party with the same name. It comfortably won the legislative election in May 1990 (66% of the votes in the lower Chamber and 67% of the votes in the upper Chamber) and its leader won the presidential election organized simultaneously with more than 85% of the votes. The FSN organized elections quite fast after regime change for two main reasons: its leaders were aware of their popularity among

citizens and they did not wish to give opposition forces time to better organize themselves (Gallagher 2005).

At the time, opposition consisted mainly of the historical revived parties that governed the country before communism – the PNL and the Christian Democratic National Peasant Party (PNTCD) – and the party belonging to ethnic Hungarians: Democratic Alliance of Hungarians in Romania (UDMR). In spite of their relatively weak appeal to population, some of these opposition forces mobilized young people and intellectual elite in large protests organized against the FSN until the summer of 1990. Iliescu – interim president of the country and FSN leader – called the workers in the coal mines from the Jiu Valley (an industrial area in the South of the country) to the capital to spread the protestors with the use of violence. This scenario was repeated four times in an interval of 18 months (until September 1991).

Such a history of violence accompanying the first years of transition was possible due to the absence of a constitutional framework to settle conflicts in a democratic manner. During the first term in office, the government also realized that legitimacy through violent means is not a long-term possibility. Instead, the legal way to gain legitimacy was through a new constitution – a fundamental law required anyway by the new institutional framework. With complete control over all central political institutions (legislature, government, and presidency), the FSN could coordinate earlier decisions with the constitutional design. For example, the FSN enforced the strong position of the presidential office with its decisive influence on government formation. This was rooted in the previous clash between Iliescu and Roman and had to do with Iliescu's desire to hold control over who is nominated as prime minister.

Another example is the provision about close ties between the executive branch and the judiciary that allowed for an almost direct control of the adjudication (Hein 2013). Such a control was necessary to avoid the implementation of a Lustration Law or any sort of prosecution against the elites reproduced from the previous regime. One final example refers to the form of government: the FSN pushed to have republic as a form of government explicitly acknowledged in the constitution. Furthermore, it also made sure that this article cannot be changed by any revision. Overall, the constitution including a great amount of provisions that reflected the FSN's willingness to secure power and strengthen its dominant position.

The constitutional text was adopted in November 1991 by Parliament and according to Art. 47 the constitutional revision is final after its approval through a popular referendum. Since this provision did not apply to that situation, a referendum was not required to adopt the 1991 constitution. Nevertheless, the Parliament considered the referendum as the most democratic mean to adopt a constitution and decided in that direction (Law No. 67 / 1991). Since the law required no participation quorum for constitutional adoption, the constitution could be adopted if the majority of those who turned out to polls cast a vote in its favor. This happened without any difficulty (Table 1).

The FSN used the 1991 constitutional referendum as a tool to legitimize its authority. In this sense the popular support replaced the previously used violence to achieve specific ends. Moreover, popular legitimacy served a longer-term purpose. By approving the new constitution, the public agreed to the new shape of the rules of the game according to the FSN's preferences. Once translated into legislation these preferences guided the life of the country – from institutional and political issues to broader aspects such as the pace of democratization – in the first post-communist decade. The popularity and success of the referendum reassured the FSN elites about citizens' support; such a support continued to exist until 1996 when these elites lost for the first time their place in government.

The 2003 constitutional reform

Since the 1991 constitution partly served the particular purposes of the party in government, its limits were quite obvious from adoption. Over time several political parties called for its modification. The foreseen accession of the country to the EU provided the appropriate opportunity to bring constitutional amendments. In its preparation for accession the country was required to provide rights to European citizens such as the right to property, the right to vote in local and European elections, or the right to be elected in local elections. Also, the constitution had to make references to the European Parliament elections, to regional policies at European level, and the possibility to join the Eurozone in the future. Of great importance were also the issues related to state sovereignty that had to be modified as soon as Romania became a Member State. The broad pro-accession consensus among the political elites belonging to all parliamentary political parties, including the radical right,

made it clear that constitution amendment was only a matter of time. While the Greater Romania Party (PRM) was the only political actor against constitutional reform, the rest of parliamentary political parties demanded it.

The widespread desire of political actors to alter the constitution increased the saliency of the process and speeded up the reform. The amendment law was initiated by 215 Deputies and Senators and was adopted on 18 September 2003 in both Chambers of Parliament (Senate and the Chamber of Deputies). The referendum called to validate the change was the only organized in two days in post-communist Romania (18-19 October). It had a turnout higher than 55% out of which a large majority voted in favor (Table 1). The stake of this referendum was not the “Yes” vote since it was quite obvious from earlier opinion polls that there was major support for the constitutional change among the population; this support has been mainly triggered by information campaigns carried out by political parties in the media. Instead, the challenge was the potentially low participation that could have endangered the entire process of constitutional revision.

Since the public appeared to bear little interest in the constitutional revision, the government intervened to make sure this participation quorum was reached. According to allegations of opposition parties and civil society representatives this intervention took the form of rigged turnout: numbers were inflated and electoral bribe was provided to boost participation (Carey 2004; Hein 2013). Evidence provided by media and foreign observers regarding bribery and fraud in the 2003 referendum is consistent with the behavior of Romanian political parties in elections. All local, national, and presidential elections since 2004 have been plagued by attempts made by political competitors to buy the votes of the electorate (Gherghina 2013). Given the broad political consensus about the necessity of a constitutional change, the referendum served a general goal. However, the government party (PSD) interfered with the referendum procedures to ensure its validity and to avoid the repetition of the referendum. Overall, the 2003 constitutional referendum cannot be considered an instrument to reach the objectives of a singular political actor. Let us now turn to another category of mandatory referendums, namely those required to validate the impeachment of the country president.

The Impeachment Referendums: 2007 and 2012

In post-communist Romania there were two major periods of cohabitation and both ended up in institutional conflicts between the country president, on the one hand, and the prime minister backed by parliamentary majority, on the other. The first institutional conflict occurred in 2007 when the political party backing the country president was excluded from the government coalition. Following the 2004 legislative election the government coalition was led by an electoral alliance formed by the Liberals (PNL) who received the position of prime minister and the Democrats (PD, another successor of the FSN) whose leader became country president. Following internal tensions in the spring of 2007, the PD left the government coalition. The relations between the leaders of the two parties were tensioned even before this “divorce”: the incomplete codification of the relationship between the president and the prime minister together with their strong personalities led to frequent political clashes. The PNL continued in a minority government together with the UDMR, but received parliamentary support from the major opposition party – the PSD. These parties announced their intention to impeach the country president (Traian Băsescu) based on the following allegations: violation of the constitution, partisanship in favor of the PD (according to the Romanian Constitution the president has to be neutral), interference in the government's affairs and, more in general, abuse of power through infringement upon the authority of the main institutions - the government, the judicial system and the Parliament, as well as instigating disrespect for Parliament and the government.

The Parliament voted for impeachment and a referendum was scheduled one month later. In essence, the impeachment referendum organized in May 2007 was used as means by the government to sort out an institutional conflict with the country president. In case of a successful referendum, the president had to be removed from office and early elections had to be called. In the absence of institutional solutions to diminish the clashes between the two figures of the executive, the government made appeal to the solution of impeachment and subsequent referendum. Its ability to put in practice such a plan was limited by two major factors. First, the government and its supporting parties lacked strong arguments against the president. This has been pointed out by the Constitutional Court of Romania that gave a negative advisory decision prior to impeachment. According to the opinion of the Court the allegations were not solid. Second, the president and his supporters (mainly the PD) presented the referendum to the entire citizenry as part of a plot against him. One of the messages conveyed during the campaign was that the referendum was merely a strategy

employed by the government to get rid of him, an inconvenient person. In doing so, the president depicted the entire referendum in terms of “us” (the president as representative of the people) vs. “them” (the corrupt elite in Parliament). In the absence of counter-arguments from the opposing camp, the result of the referendum was favorable to the president (see Table 1).

The 2012 Impeachment

The second impeachment referendum organized in 2012 had fairly similar reasons, targeted the same country president (Băsescu), and the reasons behind it were comparable to those from 2007. Following the 2008 parliamentary elections, Băsescu – using a discourse related to the global financial crisis - called for the formation of a great coalition between his party (the PDL, former PD), the PSD, and the Conservative Party (PC); the latter is quite small and has been a traditional ally of the Social Democrats since 2000. These parties gained together more than two thirds of the seats in the 2008 legislative election. This coalition lasted until October 2009 when the PSD and the PC left the government after repeated attacks against their coalition partners. Two months later Băsescu was re-elected as president, winning against the PSD candidate (Mircea Geoană) who was supported also by the PNL in the second round. He shaped a legislative majority for his party (PDL) with the help of the UDMR and using 35 defector parliamentarians from the PSD and the PNL. Following severe economic reforms (e.g. cutting public servants’ wages by 25%), the PDL government became increasingly unpopular and more parliamentarians crossed the floor to opposition parties. Consequently, the parliamentary majority modified and the government got a vote of no confidence in February 2012. Băsescu appointed a new prime-minister with close ties to his party, but this cabinet also got a vote of no confidence in April 2012. Under these circumstances, Băsescu had to appoint a prime-minister from the opposition side.

The gradual strengthening of the opposition parties was mainly the effect of the decision taken in February 2011 regarding an electoral alliance between the PSD, the PNL, and the PC: the Social-Liberal Union (USL). Within the electorate, opinion polls indicated increasing popularity that was confirmed at the June local elections in which the USL was the clear winner. In Parliament the alliance acted as a coherent and cohesive actor, thus managing to pass a vote of no confidence against two governments in a row. Following the April 2012 vote of no confidence, the PSD president (Victor Ponta) was nominated as prime

minister. The USL government coalition initiated several institutional reforms that were on the edge of the legal provisions and challenged the rule of law in the country. First, it revoked in a single day the PDL speakers of the two Chambers of Parliament and the Ombudsman. The latter was the sole official who could notify the Constitutional Court about the abuses committed by the public authorities. The speaker of the Senate is particularly important as this is the second position in state. When the president is impeached or cannot make full exercise of his functions, the Senate speaker becomes the caretaker. Crin Antonescu, the PNL leader and USL co-president, was elected as Senate speaker. Second, it passed an emergency decree that withdrew the attributions of the Constitutional Court concerning the decisions of the Parliament. These marked the beginning of the conflict as Bănescu quickly responded. He denounced the presumptive coup and claimed that the main objective of the 'plotters' was to gain control over the judicial system. In his view such gestures were made to prevent the conviction of some politicians, business and media tycoons.

At the beginning of July, the Parliament was called to impeach the President for violations of the Constitution. The main charges brought to him were quite similar to the ones in 2007: infringement upon the government and prime minister's activities; violation of the fundamental rights and freedoms of citizens; violation of the separation of powers and judicial independence principles; violation of representative democracy principles; the initiation of an unconstitutional project to revise the Constitution, direct pressures on the judges of the Constitutional Court, and the abandonment of his mediation role in the state and society. The Constitutional Court provided a consultative opinion on each of the eight charges. It found that only one was motivated as the President did not act as a mediator among the state's institutions. The Parliament voted in favor of the suspension (256 vs. 114) and a referendum was scheduled for 29 July.

Following this vote and the low president's popularity, the government concerns were mainly oriented towards the validity of the referendum. The voter turnout in the previous Romanian referendums was rarely over 50% but the threshold was required only in 2003 when the constitution was modified. In spite of the provision from Law No. 3 / 2000 that requires participation quorum, the 2007 referendum for impeachment was not bound to turnout. Accordingly, when scheduling the 2012 impeachment referendum, the government wanted to be on the safe side and issued an emergency decree (No. 41/2012)

that removed the threshold provision. On 24 July, following the petition of 63 PDL deputies, the Constitutional Court overruled the emergency decree and thus the participation threshold was required. Parallel to the emergency decree and the PDL objection to its constitutionality, one PNL Senator proposed two days for the vote instead of one as usually happens with every election or referendum in Romania. This proposal was based on the 2003 referendum experience, but was rejected by the Judicial Committee in the Senate on 17 July. The government was successful only in extending the voting time with two more hours: it was usually between 07.00 and 21.00, for this referendum votes could be cast between 07.00 and 23.00.

As in 2007, this referendum had a clear instrumental task: citizens were called to legitimize the government policies and to remove from office a president who opposed these policies. The camp opposing the president had a similar composition as five years before. The impeachment procedure was part of a series of quasi-constitutional reforms initiated by the new government coalition and the referendum was the means to achieve it. Citizens were again used to solve an institutional conflict. Similarly to the referendum organized in 2003, there were allegations of rigged turnout. A few weeks after referendum the Permanent Electoral Authority checked the voting lists and identified 118,881 multiple votes and 1,082 records with invalid ID card numbers. One of the PSD leaders actively involved in campaign is under investigation and several hundred voters have been also investigated or cited as witnesses. A successful referendum was likely to provide full control of the USL over all state institutions. Once the president was dismissed, early elections had to be called (the regular one was scheduled for 2014), quite likely simultaneously with the legislative election scheduled for fall 2012. The USL enjoyed large popular support – it won approximately 60% of the votes in the 2012 parliamentary election – and thus the likelihood of having a president belonging to this alliance was very high. Nevertheless, the participation quorum was not met in referendum and thus the results were invalidated although the large majority of those who voted (Table 1) approved the impeachment procedure.

The Referendums initiated by the President: 2007 and 2009

The remaining three referendums organized in post-communist Romania were initiated by the country president in 2007 and 2009. Since all were organized simultaneously with other types of elections in which the president or his party was involved, the instrumental feature

of these direct democracy practices can be easily anticipated. A closer look at them reveals this was indeed the case. The 2007 referendum was called by the president half a year after the impeachment referendum to which he survived. The issue of this referendum was a particular type of electoral system. Until then, Romania used in all legislative election an electoral system of proportional representation with closed lists. This means that candidates were ranked by a political party on a list and voters had to choose between lists of candidates without the possibility to express their preferences for one candidate or the other. This system received an extensive amount of criticism from media, civil society, and some politicians due to its party centered approach in which political parties decide the candidates (Gherghina et al. 2013).

Following this criticism, the reform of the electoral system has been on the public agenda for a few years. Until 2003 a civil society organization (Asociatia Pro Democratia) tried twice to collect citizen signatures to propose Parliament a different type of electoral system. The PSD and the PNL also had some initiatives regarding the change of the proportional representation system into a majority system with voting in single member districts. In 2007, the electoral system reform became salient and Pro Democratia together with all political parties had several rounds of negotiations about different types. As a result of their meetings, the consensus was that a majority voting system with proportional compensation is appropriate for the country. The country president had initially accepted this type, but changed his mind after the departure of his party (the PD) from the government coalition.² This issue was part of the ongoing clashes between the president and the prime minister that continued after the failed impeachment referendum. The president's main argument was that the system earlier agreed upon and supported by government did not encourage a cleaning of the political class (i.e. political parties continued to nominate their favorites and citizens could not choose between candidates). As a result, although the government took responsibility in front of Parliament for the new electoral system in October 2007 based on the government proposal, the president called for a referendum in which he proposed an alternative system – two-round majority voting (known also as runoff voting).

² Although formally the Romanian president is not allowed to be a party member, president Băsescu crossed that line and got involved in party politics: continued to guide the party, participated at some meetings, involved its party in coalition government when it had the possibility etc. This visible partisanship was one of the reasons behind his two impeachment procedures.

The referendum was organized in November 2007 simultaneously with the first elections for the European Parliament. The referendum had a double task. First, it served as an accurate instrument to legitimize the position of the president in its dispute with the government. Since the conflict was not settled after the impeachment referendum in May, the clashes continued and the president had to reaffirm its position as representative of the people. Second, the referendum was used as electoral strategy: the party of the president was in opposition for more than half a year and this was a good opportunity to gain visibility. The PD had always supported the president's initiatives and it was always in spotlight when the president had an intervention. The important stake was not necessarily the presentation in the European Parliament but more a rehearsal before the 2008 legislative election. The turnout (26.5%) was mainly due to the low interest for European election and saliency of electoral issues among citizens. Although 81% of those who voted agreed to president's proposal, the referendum did not pass due to its failure to meet the participation quorum.

The 2009 referendums

As a continuation of his conflict with Parliament, started in 2007 when 322 parliamentarians voted in favor of impeachment, the country president adopted in 2009 a discourse of structural reform. Building on the negative perceptions of the electorate about the political class (seen as corrupt), the president advanced two ideas. The first was that the legislature is oversized and the number of members should be reduced to maximum 300. At the time the Romanian Parliament included approximately 500 members in both Chambers of Parliament. The populist message conveyed by the president was that there are too many political elites and the legislature will do fine with fewer representatives in parliament. The second idea was that the second Chamber of Parliament is a waste of resources and the country would do fine with a unicameral legislature. He built his arguments on the similar election and functions of the members in the two Chambers. According to this logic, if the two Chambers do not differ significantly, then there is no point in having a bicameral legislature. Moreover, the president argued that Romania is not a federal country to require representation of states in a second Chamber.

In light of these arguments, the president called for two referendums on these issues – each question addressed separately – at the end of 2009. The problem with these referendums lies in their timing since they were organized the same day with the

presidential election in which the country president was a candidate. In essence, the issues submitted to referendum lied at the core of his electoral campaign and the entire referendum can be seen as an electoral strategy. During his term in office (2004-2009) president Bănescu took some controversial decisions, actively engaged in institutional conflicts, and faced criticism from domestic and international actors. In the absence of major accomplishments, his popularity had gradually decreased and opinion polls indicated a real threat from challenging candidates. Consequently, Bănescu framed his entire campaign around the two referendums and sought to mobilize electoral support around the idea of an oversized and incompetent political class. In doing so, he portrayed himself in the role of a fighter in the name of the people. The referendums were declared valid with a turnout of almost 51% and an approval rate of almost 78% of those who voted, and their provisions were included in the 2011 proposal for constitutional revision proposed by the president and his party.

The Strategic Use of Referendums

The previous sections of this article presented the referendums organized in Romania between 1991 and 2012. The central argument was that the vast majority of referendums were used to serve political purposes rather than to provide citizens a voice in the decision-making process. Table 2 classifies them according to the typology presented in the introduction to this special issue. Three out of the four cells are populated by cases: the centripetal type of action with both policy-oriented and institutional goals, and the centrifugal type of action with the policy goals in mind. While the referendum on the 1991 Constitution could be listed in more than one category (i.e. it has institutional goals) it was included only in the category that corresponded the most to the goals of the initiators. At the same time, the 2003 constitutional referendum is not included in the table because it was the only one where a clear instrumental use could not be identified despite government involvement in the process.

Table 2 about here

To begin with the centripetal and policy category, the 1991 constitutional referendum was both called to strengthen the legitimacy of the government and to promote its policies. The

increasingly contested FSN government required popular approval for the fundamental law that reflected some its core interests. The impeachment referendums that were called to settle down institutional conflicts were characterized by centrifugal action and policy oriented goals. There were similar reasons behind the president's suspension and composition of the opposing camps. In 2007, the parliamentary majority sought to remove from office an adversarial president and thus it was oriented against opponents. The president was the informal leader – and former formal leader – of the Democratic Party that left the coalition government several months before the referendum. In that sense, this was meant as a blow against that party, also in light of the parliamentary elections scheduled in 2008. In 2012, the USL government used the referendum as means to receive public approval for the series of quasi-democratic reforms initiated as soon as it secured a position in power. This referendum was oriented against the president as an obstacle against the full executive control by the government or parliamentary majority.

Three other referendums belong to the category of institutional goals and centripetal action since they were used to mobilize voters. The first, organized in 2007 in conjunction with the election for the European Parliament, was meant to ensure visibility to the president and to his party in the last competition before the legislative election. The positioning of the party in opposition took it out of the spotlights and this referendum provided the opportunity to get back in the political game. Moreover, the referendum was meant to strengthen president's position in relation to the legislature and executive and thus to provide popular support in the ongoing institutional conflict. In the same attempt of the president and his party to gain popularity, the 2009 referendums regarding the size and structure of Parliament were organized in conjunction with the presidential election in which the incumbent president ran (and eventually won). They had election strategic functions since they were at the core of the president's campaign and could clearly influence voter preferences.

As reflected in Table 2, most referendums either served the goals of government / parliamentary majority or those of the president. The latter took advantage of those called by himself, while the government sought to pursue particular advantages from those that were mandatory. This distinction deserves at least two nuances. On the one hand, the 1991 referendum brought also benefits to the country president not only to the government. The two were closely linked and the pursuit of legitimacy was common to both. On the other

hand, the impeachment referendums were not only used by the government to solve an institutional conflict, but they were indirectly used also by the president. Since the government initiated them, it was expected to benefit the most from a successful referendum.

This evidence indicates that most referendums organized in Romania were used as tools to augment political actors' popularity (i.e. centripetal action). Irrespective of their policy or institutional goals, most of them had straightforward political agendas that were recognized by voters to a larger or smaller extent. It is also important to note that there is a balance between policy and institutional oriented referendums, all of the latter being initiated by the country president. The analysis presented here revealed important features of the instrumental use of referendums and explored how various political actors pursued specific goals through them. Some of these goals were short-term and did not even pursue an implementation of the opinion expressed in the referendums. The best examples are two out of the three institutional referendums (size and structure of Parliament 2009) in which there was no follow-up and the attitude of the elites, including the initiator, was quite ambiguous towards the results. Even the referendums that were invalid due to low turnout (electoral system 2007, impeachment 2012) were associated with great popularity of the initiators in the following electoral contests: the president got re-elected in 2009, while the USL gained the majority of seats in the 2012 elections, organized half a year after the referendum.

These features can better contextualize the populist messages used in most of these referendums. Earlier research revealed the presence of such messages in the 2007 and 2012 impeachment referendums (Gherghina & Miscoiu 2013; Gherghina & Soare 2016), they were spread across all the referendums organized starting with the second post-communist decade. This type of messages was present already in the campaign for the 2003 constitutional revision in which political parties referred to this referendum as a view into the future. The consensus at the level of political elites produced a general discourse in which there was an equivalence sign between the success of this referendum and the EU accession. This was the mild beginning and in 2007, with both impeachment and electoral system referendums, the discourse moved on the territory of elite vs. the regular people that characterizes the populist rhetoric. During the impeachment referendum, the campaign of the president was centered on the 322 parliamentarians that voted for his suspension and

presented them in antagonism with the values and desires of the ordinary people. The opposing camp used similar arguments in which us (the good willing political elite) vs. them (the corrupt president and his party) became the motto of campaign. Later that year, in the attempt to persuade the public about his version of electoral system, the president used the same references to an old-fashioned, obedient to interest groups and self-centered political elite.

Conclusions

This article analyzed the way in which referendums were used by political parties in Romania between 1991 and 2012. The findings indicate that most referendums were used as electoral strategy to promote the political agenda of the initiator (in the case of policy-oriented referendums) or its image whenever institutional changes were targeted. Two out of the seven referendums were oriented against political opponents and aimed to weaken their position. This instrumentalization of the referendums made room for populist discourses that either motivated the decision to call for some of them or characterized the campaign before the vote. Moreover, the simultaneous organization of some referendums with European or presidential elections in 2007 and 2009 is another indicator of how related the two types of voting were for the initiators and how direct democracy was hijacked to become direct political advertisement.

These findings bear implications beyond the scope of the analyzed single-case study. At theoretical level, they reveal the existence of similar drivers behind referendums organized in different contexts and on several topics. The typology developed in the introduction to this special issue captures the essence of the Romanian referendums and outlines how little their organization had to do with the goals of direct democracy. Instead, they were used as alternative means to promote the ideas of particular political actors and to increase their visibility and public support. This reflects upon a broader mechanism that is relevant for the political system and society. Salient and controversial issues in society made it to the public agenda but not through the usual means of political debate. In this sense, the referendums were guided to serve legitimacy and electoral purposes by hiding these intentions behind the idea that public preferences will influence the decision-making.

At empirical level, the Romanian case brings supplementary evidence to the general idea that political parties and politicians use and abuse referendums to serve their goals.

This contributes to the entire debate about the vices and virtues of direct democracy by indicating that referendums per se are not the problem, at least in this case, but the way in which they are used. This type of evidence feeds back into the relevance of intended goals, outlined in the introduction to this special issue.

The exploratory nature of this article does not allow for deeper insights and this can be a fruitful avenue for further research. Understanding how and why the instrumental use of referendums can be damaging for direct democracy are important issues to be discussed by future studies. This can be done either through a process-tracing analysis of the events or even through a public survey aimed at capturing the opinions of ordinary citizens about what happens with the use of referendums by political parties. This perception may also be an opportunity to take a closer look at the demand side of direct democracy, what Romanians expect from a referendum, irrespective of its instrumental use by political parties.

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Table 1: The referendums organized in Romania

	December 1991	October 2003	May 2007	November 2007	November 2009	November 2009	July 2012
Topic	Adoption of a new constitution	Constitution revision	Presidential impeachment	Electoral system (majority vote)	Unicameral parliament	Size of parliament	Presidential impeachment
Type	Mandatory	Mandatory	Mandatory	Top-down	Top-down	Top-down	Mandatory
Initiator	Parliament	Parliament	Parliament	President	President	President	Parliament
Turnout (%)	67.3	55.7	44.5	26.5	51	51	46.2
Votes YES (%)	77.3	89.7	24.8	81.4	72.3	83.3	87.5
Votes NO (%)	20.4	8.8	74.5	16.2	20.7	10.5	11.2
Result	Valid	Valid	Valid	Not valid	Valid	Valid	Not valid

Note: The “yes” and “no” votes are calculated from the total number of votes.

Sources: Nohlen & Stoever (2010), Central Electoral Bureau.

Table 2: The Instrumental Use of Referendums in Romania

		Type of Intended goals	
		<i>Policy</i>	<i>Institutional</i>
Type of action	<i>Centripetal (party-oriented)</i>	Constitution 1991	Electoral System 2007 Size of Parliament 2009 Unicameral Parliament 2009
	<i>Centrifugal (vs. opponents)</i>	Impeachment 2007 Impeachment 2012	